

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 544 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAVINDRA SHYAM BIHARI PATEL SHETHWALA

Versus

DINESHBHAI MUJABHAI RATHOD

Appearance:

MR ZUBIN F BHARDA for Petitioner

MR SHAKEEL A QURESHI for Respondent No. 1, 2

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 06/02/98

ORAL JUDGEMENT

Mr.Qureshi appears for both the respondents
waives service of notice on behalf of respondent no.2.

2. On the request of both the learned counsel the
appeal itself has been heard. The brief facts of the
case are that the appellant's only son aged about 2 years
died as a result of accident by the vehicle owned by the
respondent no.2 and driven by respondent no.1. on

23.3.97. The claim for the sum of Rs.80000/- was lodged before the Motor Accident Claims Tribunal, Gondal which was registered as claim case no.160/97. The claimants were allowed to proceed in forma pauperis. A settlement was filed in the court on 2.4.97 stating that in the claim petition, the claimant has agreed to reduce his claim from Rs.80000/- to Rs.9999/- and has finally agreed to accept payment of Rs.5000/- in full and final settlement of claim. On this application the court passed the following order:

"The parties have submitted this pursish setting the Claim in Rs.5000/- The same is read over and explained to the parties. They have voluntarily accepted the same. I am also satisfies., that it is both legal and within the purview of subject matter of the claim petition and also in the interest of claimants. The compromise is, therefore, ordered to be recovered in exercise if the power under order 23 rule 3 of Civil Procedure code and awarded as drawn in terms of this compromise.

No order as to costs."

3. The perusal of the aforesaid order goes to show that regarding satisfaction of the court that the agreement is legal and within the perview of subject matter of the claim petition and in the interest of the claimants on the face of it appears to be without application of mind to relevant provisions of law and ordinary course of human conduct. Sec. 140 of Motor Vehicles Act delaing with accidents claims provide grant of minimum sum of Rs.50000/- as 'no fault liability' of the owner of vehicle and it has been made obligatory upon the court to make an interim order for the award of compensation on principle of 'no-fault liability' if conditions of the provisions are satisfied i.e. that as a result of accident a person has died or suffered injury resulting in permanent disablement for immediate relief and that amount is to be adjusted in the final claim but which is not refundable.

4. Thus prima facie the court could not have been satisfied about the legality of the settlement for a sum of Rs.5000/- as compensation in the case of death. At any time, there was no material to reach reasonably at satisfaction, even subjectively, that it was in the interest of the claimants.

5. The other fact which clearly emerges from the circumstances noticed above is that original claim was

for a sum of Rs.80000/- and by agreement it was sought to be reduced to Rs.9999/- and by the very same document the claimant finally settled by accepting payment of Rs.5000/- only. It is against all probable course of human conduct to agree to such contrasting situations while arriving at the settlement. In the event of settlement for a lower sum then claimed, the claim in petition as well as accepted amount would have been the same. It does not stand to reason that when at the time of filing of 'pursis' everything was over by accepting a paltry sum of Rs.5000/- against claim of Rs.80000/-. What prompted the claimant to reduce the claim amount in petition to Rs.9999/- after having accepted the settlement at even lower sum. It raises serious doubt about voluntary nature of agreement. I am therefore of the opinion that the learned Motor Accident Claims Tribunal has not exercised its power under Order 23 Rule 3 of Civil Procedure Code in a judicious manner and the order deserves to be set aside on this ground alone.

5. Accordingly this appeal is allowed. Order dated 2.4.97 passed by Motor Accident Claims Tribunal, (Auxillary), Gondal in MACT Case No.1067/97 is set aside and MACT case is restored to its original to be decided afresh in accordance with law. No costs.

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